CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

Victim Compensation Program

January 19, 2006

630 "K" Street
First Floor Hearing Room
Sacramento, California

RECOMMENDATION TO THE BOARD REGARDING MENTAL HEALTH COUNSELING SESSION LIMITATIONS UNDER THE VICTIM COMPENSATION PROGRAM

Summary

Government Code section 13957 generally establishes maximum amounts for reimbursement of mental health expenses in the amount of $10,000 for direct victims and $3,000 for most derivative victims. The Board has adopted regulations that set mental health counseling session limitations to be applied within the statutory dollar parameters. As explained herein, staff is proposing changes to the current mental health service limitations pursuant to Government Code section 13957.2 . This will result in the repeal of the current regulations. The new limitations will be filed with the Secretary of State.

While the staff recommendations include increases to mental health counseling session limits in certain situations, the statutory mental health expense limits would still apply.

Background

In response to fiscal difficulties, in early 2003 the Board adopted emergency mental health regulations that set session limitations for outpatient mental health counseling, established specific criteria for treatment beyond those limitations, and required specific documentation at various stages of treatment. The emergency regulations were later modified and adopted as final regulations. The regulations have contributed to substantial decreases in costs of mental health reimbursement, as well as an increased ability for staff to monitor mental health treatment reimbursed by the Victim Compensation Program (VCP). However, session limitations and related reporting requirements complicated the processing of claims, both for providers and for the VCP, due to the additional paperwork and the increased monitoring required of all requests for treatment beyond the initial session limitations. When the regulations were adopted, staff indicated that the impact would be reviewed periodically and changes would be proposed as circumstances and experience dictated. Two years have elapsed and the Restitution Fund is now stable. Although staff believes the session limitations, documentation requirements, and criteria for additional treatment have been effective, certain aspects of the regulations have created impediments to access to mental health services for crime victims and warrant consideration for change. Consequently, staff proposes that several changes be made to the VCP's mental health counseling session limitations and related requirements.

These proposed changes have been discussed with several victim-witness coordinators, mental health providers, and other victim advocates. The reaction has been positive, and no concerns have been expressed over the changes. Those consulted have expressed their belief that the changes will also help to streamline their processes.

Summary of Proposed Policy Changes

The following is a summary of the changes to VCP mental health policies recommended by staff:

1. Increase the session limitation for adult direct victims from 30 to 40 sessions to equal the number provided to minor direct victims.
2. Increase the initial session limitation for a primary caretaker of a minor victim (at the time of the crime) from 15 to 30 sessions per primary caretaker. The current regulation provides for a benefit of 30 sessions to be shared between two primary caretakers. Staff also proposes to eliminate the requirement that the last 15 sessions only be authorized if needed for the recovery of the victim.
3. Increase the session limitation for minor derivative victims from 15 to 30 sessions.
4. Increase allowable collateral sessions within the overall session limit for minors from three sessions to six sessions.
5. Eliminate the Treatment Progress Report (TPR) requirement.
6. For both minor and adult direct victims, delete the requirement that there be a permanent impairment before additional treatment can be authorized.
7. For both minor and adult direct victims, allow additional treatment even if there was only a single (one-time) serious threat of harm, or violent act that caused serious bodily injury to a victim, provided that the single incident warrants the additional sessions.
8. For both minor and adult direct and derivative victims, change the requirement that "mental health counseling must be provided within three months" to "mental health counseling must be initiated within three months."
9. Replace specific references to the "*DSM IV*," with "the most recently published version of the *DSM"* when describing the professional guidelines followed by the Program.

Statutory Authority

Government Code section 13957.2 allows the Board to adopt maximum rates and service limitations for reimbursement of mental health and counseling services without going through the regulatory process. Upon adoption by the Board, an informational copy of the rates and service limitations must be filed with the Secretary of State.[1] This statutory authority gives the

[1] The board may establish maximum rates and service limitations for reimbursement of medical and medical-related services and for mental health and counseling services. The adoption, amendment, and repeal of these service limitations and maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the service limitations and maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a

Board greater flexibility in the service limitation and rate setting process. Repeal of the existing regulations may also be accomplished through the simple process of submitting a form to the Office of Administrative Law.

Staff recommends that the Board repeal the mental health service limitations regulations and instead adopt guidelines under the authority of Government Code section 13957.2.

Proposed Changes and Rationale

1. Session Limitation Increase for Adult Direct Victims

   Current Provision: A victim who is an adult at the time of the qualifying crime may initially receive up to 30 mental health sessions.

   Proposed Change: Increase the initial allowed sessions from 30 to 40 for adult direct victims.

   Justification: Currently, adult direct victims are eligible for fewer initial mental health sessions (30) than minor direct victims (40). There is little clinical evidence, however, to support the position that adult victims require fewer sessions for recovery than child victims. Increasing the session limitation for adults will provide consistency in benefits for all direct victims, as well as streamline the process of reviewing requests for additional treatment for adults. (Requests for additional treatment sessions must be supported by an Additional Treatment Plan (ATP).)

2. Session Limitation Increase for Primary Caretakers

   Current Provision: Up to two derivative victims who were the primary caretakers at the time of the crime may receive a shared benefit of up to a total of 30 mental health sessions. Therefore, if there are two primary caretakers who request counseling, they must share the 30 sessions. Additionally, a primary caretaker may receive more than 15 sessions only if the additional sessions are necessary for the effective treatment of the victim.

   Proposed Change: For primary caretaker derivative victims at the time of the crime, eliminate the requirement that the 30-session limit be shared by not more than two primary caretaker derivative victims and establish a limit of 30 sessions for each caretaker up to a total of two caretakers. Also, eliminate the requirement that sessions beyond 15 only be allowed if necessary for treatment of the victim.

   Justification: Caretakers can be extremely important partners in the mental health treatment of children. Caretakers are the persons who support and carry out many of the actions necessary to achieve the goals of treatment, and who monitor and prevent relapse once treatment is terminated. For children who present with externalizing (acting out)

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service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service. To ensure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. (Government Code section 13957.2(a))

behaviors, the active assistance from a caregiver is essential to successful treatment for the victim. Increasing the initial sessions to 30 will increase the likely efficacy of the therapy.

The majority of mental health claims received for primary caretakers are the result of domestic violence or sexual assault, which is often perpetrated by another primary caretaker; consequently only one caretaker typically uses the benefit. The proposed change is anticipated to result in a minimal increase in claims reimbursement.

The current requirement that treatment beyond 15 sessions be only allowed for the benefit of the minor victim overly restricts the availability of additional treatment for primary caretakers since psychological trauma suffered by a primary caregiver from a crime against a child for which that adult is caring may have an adverse effect on the recovery of the child. The review necessary to fulfill this requirement also creates an unnecessary impediment to the processing of claims. Allowing up to 30 sessions for all derivative caretakers will increase the likelihood of the effectiveness of treatment for the victim.

3. Session Limitation Increase for Minor Derivative Victims

Current Provision: Most derivative victims, including minor derivative victims, are eligible to receive reimbursement for up to 15 sessions.

Proposed Change: For minor derivative victims, increase the session limitation from 15 to 30. (The session limitation for adult derivative victims would remain unchanged, with the exception of primary caretaker derivative victims discussed above.)

Justification: Based on general feedback from mental health providers for minors and objective follow-up data from Children's Hospital of San Diego, it is believed that the current provision to restrict treatment beyond 15 sessions without an approved Additional Treatment Plan (ATP) for minor derivative victims is hindering the treatment of many minors, especially siblings of minor direct victims. Allowing an increased initial session limit in these cases would mitigate this concern.

4. Collateral Session Limit Increase for Minors

Current Provision: No more than three sessions may be reimbursed for meetings or discussions between the treating therapist and collateral contacts of the person being treated, including but not limited to a school counselor, teacher, religious leader, physician or other medical provider, or social worker.

Proposed Change: Increase collateral mental health session limitations (discussions or meetings between the treating therapist and collateral contacts of the person being treated) for minors from three sessions to six sessions.

Justification: Collateral contacts are persons involved in the victim's recovery such as teachers or school counselors. Mental health providers may have periodic discussions with a victim's collateral contacts to both receive additional information about the victim and to ensure cooperation and collaboration in techniques used by the mental health provider to best aid the victim's recovery. Recent review of ATPs and consultation with several VCP mental health providers indicated that the current three-session limit on collateral sessions may be insufficient. The proposed change will allow the therapist the

flexibility to meet more often with such resources as necessary to provide the most effective treatment for minor victims, within specified overall session limits.

5. Requirement for a Treatment Progress Report: Elimination

Current Provision: In cases where the initial session limitation is 30 or 40 sessions, submission and approval of a treatment progress report (TPR) is required to exceed 15 sessions.

Proposed Change: Eliminate the requirement of the Treatment Progress Report (TPR).

Justification: As part of the implementation of session limitations, the Program began requiring additional documentation, including a Treatment Plan (TP) after the first five sessions, a Treatment Progress Report (TPR) after 15 sessions, and an Additional Treatment Plan (ATP) to request sessions beyond the session limitations. While this documentation has provided additional information to monitor treatment, it has required providers to complete additional paperwork, and to a certain extent has slowed down processing time. Currently the TP and ATP forms provide significant documentation on treatment. However, in its present form, the TPR has little clinical utility and creates an impediment to quick and efficient reimbursement. After consideration, staff has concluded that the TPR has not been a significant factor in determining mental health treatment ratings and approvals, so elimination is unlikely to affect mental health treatment decisions. Staff proposes instead to revise the current Additional Treatment Plan (ATP) to include a retrospective review of progress-to-date for both new and continuing providers. The revised ATP will provide more specific questions to determine the clinical markers that the TPR is lacking.

6. Requirement of Permanent Impairment for Additional Treatment: Elimination

Current Provision: To qualify for additional treatment, the qualifying crime must have resulted in permanent and substantial impairment to the victim's activities of daily living.

Proposed Change: Delete *permanent* from the current requirement.

Justification: The term *permanent* precludes approval of additional sessions for a victim whose impairment, while not permanent, may be substantial enough to warrant mental health treatment. Deleting this term will establish less-restrictive criteria for additional treatment to benefit victims of substantial impairment.

7. A Single Act to Qualify for Additional Treatment

Current Provision: Additional sessions are only allowed if the qualifying crime includes a series of acts of significant frequency or duration.

Proposed Change: Modify the requirement to allow additional sessions to include qualifying crimes that consist of a single act that a reasonable person would consider to constitute a threat of serious harm to body integrity, or a single act that resulted in serious bodily injury.

Justification: The current provisions require a criminal act to occur on more than one occasion (*significant frequency or duration*) before additional treatment can be allowed. This language unduly limits treatment when serious bodily injury or a more serious threat

occurs due to a one-time event. A serious one-time occurrence may require a longer-term recovery period when it is particularly violent or threatening.

8. Limitations for Participants in Legal Proceedings or Upon Learning of Offender's Release

Current Provision: If a victim is scheduled to testify as a witness or is required to be involved with or participate in any criminal or dependency proceeding related to the qualifying crime, additional mental health counseling may be allowed. Current provisions require that it be provided within three months of the victim's participation in the proceedings, or within three months of learning that the victim will be required to be involved with or participate in the proceedings. Similarly, if a victim learns that his or her offender is to be released, additional mental health counseling may be allowed if it is provided within three months of the offender's release or the victim learning of the offender's release.

Proposed Change: Change the provision to reflect that the counseling may be initiated within the time period beginning at the time the victim learns that he or she is required to be involved with the proceeding (or that the offender is to be released) and ending three months after the victim's actual involvement (or the offender's actual release).

Justification: The language in the current regulation is inconsistent and may be confusing. The term "provided" (counseling must be provided within three months of the victim being scheduled to…) is sometimes interpreted as allowing only three months of total counseling sessions, when it was meant to set a limit as to when counseling should be initiated (no later than three months after involvement in the proceedings or the offender's release). Amending the language to "be initiated" instead of "provided" will clarify the misinterpretation.

9. Reference to the *Diagnostic and Statistical Manual*

Current Provision: *Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, (DSM IV)*.

Proposed Change: Refer to the most recently published version of the *DSM*.

Justification: The *Diagnostic and Statistical Manual of Mental Disorders* (*DSM*) is a manual published by the American Psychiatric Association that lists all mental health disorders, their causes, gender statistics, age at onset, and prognosis, as well as research concerning optimal treatment approaches. Because the *DSM* is regularly updated, deleting a specific version of the manual will eliminate the need to amend the language each time the updated version is published.

Estimated Fiscal Impact of Staff Recommendations

Session Limitation Increase for Adult Direct Victims

In fiscal year 2004/2005, while 2,235 primary adult victims used mental health services, only 3.6% (81) used 30 or more sessions. If all 3.6% used 40 sessions instead of the current 30 sessions allowed, the additional cost to the VCP would have been approximately $60,000.

Session Limitation Increase for Primary Caretakers

In fiscal year 2004/2005, 44 of the 92 primary caretakers' requests for additional sessions were denied due to the determination that the treatment would not benefit the direct victim. Increasing

the initial sessions to 30 would have allowed the 44 claims to be approved at a cost of approximately $50,000.

Session Limitation Increase for Minor Derivative Victims

In fiscal year 2004/2005, while 4,076 minor derivative victims used mental health services, only 10.2% used 15 or more sessions. If all 10.2% used 30 instead of the current 15 sessions allowed, the additional cost to the VCP would have been approximately $500,000.

Total Anticipated Cost per Year

Other recommended changes may create minor increases in expenses allowed. It is unknown to what extent theses changes may encourage additional claims to be submitted. The total additional cost of the changes could potentially reach $1-2 million per year.

Staff Recommendations

1. Adopt the proposed guidelines to become effective upon repeal of the existing regulations.

2. Repeal the regulations and file an informational copy of the new service limitations and session limits with the Secretary of State pursuant to Government Code section13957.2 (a).

3. Require staff to report back to Board on the effect of the new guidelines in one year.